

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Emergency Rule 36—Patient Protections and Related Health Care Services Regarding Health Insurance Matters Affecting Insureds in Louisiana Caused by the Outbreak of Coronavirus Disease (COVID-19) (LAC 37:XI.Chapter 31)

On January 31, 2020, the United States Department of Health and Human Services Secretary Alex A. Azar declared a public health emergency (PHE) for the United States to aid the nation's healthcare community in responding to the coronavirus disease (COVID-19). The United States Centers for Disease Control and Prevention (CDC) has declared COVID-19 a worldwide pandemic due to its global effect. Furthermore, on March 13, 2020, President Donald Trump invoked the Stafford Act and declared a national emergency regarding the COVID-19 outbreak. COVID-19 has been detected in the state of Louisiana with a growing number of residents testing positive for the disease. There is reason to believe that COVID-19 may spread among the population by various means of exposure, therefore posing a significant risk of substantial harm to a large number of citizens.

Emergency Rule 36 is issued to address the statewide public health emergency declared to exist in the state of Louisiana as the result of the imminent threat posed to Louisiana citizens by COVID-19, creating emergency conditions threatening the lives and health of the citizens of this state. Emergency Rule 36 is issued under the authority of the Commissioner of Insurance for the State of Louisiana, pursuant to the following: Proclamation No. JBE 2020-25 issued on March 11, 2020, by Governor John Bel Edwards declaring a State of Emergency extending from March 11, 2020, through April 9, 2020, unless terminated sooner and Proclamation No. JBE 2020-29 issued on March 14, 2020, transferring authority over certain insurance matters to Commissioner of Insurance James J. Donelon (commissioner).

Accordingly, Emergency Rule 36 shall apply to all health maintenance organizations (HMOs), managed care organizations (MCOs), preferred provider organizations (PPOs), pharmacy benefit managers (PBMs), and third party administrators (TPAs) acting on behalf of an HMO, MCO, PPO, and any and all other insurance related entities licensed by the commissioner or doing business in Louisiana (collectively known as "health insurance issuers") and their insureds, policyholders, members, subscribers, enrollees and certificate holders.

COVID-19 has created a mass disruption to the normalcy previously enjoyed by Louisianans and is an immediate threat to the public health, safety, and welfare of Louisiana citizens. In order to respond to the emergency and to protect and safeguard the public, health, safety and welfare of the citizens of this state, it is necessary to issue Emergency Rule 36.

Title 37 INSURANCE Part XI. Rules

Chapter 31. Emergency Rule 36—Patient Protections and Related Health Care Services Regarding Health Insurance Matters Affecting Insureds in Louisiana Caused by the Outbreak of Coronavirus Disease (COVID-19)

§3101. Benefits, Entitlements, and Protections

A. The benefits, entitlements and protections of Emergency Rule 36 shall be applicable to insureds, policyholders, members, subscribers, enrollees and certificate holders who, as of 12:01 a.m. on March 17, 2020 have a policy, insurance contract or certificate of coverage issued by a health maintenance organization or for any of the types of insurance enumerated in R. S. 22:47(2)(a) and reside in the state of Louisiana. Insureds shall include, but not be limited to, any and all policyholders, members, subscribers, enrollees and certificate holders.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3103. Applicability

A. Emergency Rule 36 shall apply to every health maintenance organization (HMO), managed care organization (MCO), preferred provider organization (PPO), pharmacy benefit manager (PBM), and third party administrator (TPA) acting on behalf of a health insurance issuer, HMO, MCO, PPO, and any and all other insurance related entities licensed by the commissioner or doing business in Louisiana (collectively known as "health insurance issuers").

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3105. Waiver

A. All health insurance issuers shall waive all cost-sharing including copayments, coinsurance, and deductibles for screening and testing for COVID-19 as specified by the CDC, including hospital, emergency department, urgent care, provider office visits, lab testing, telehealth, telemedicine, and any immunizations that are made available.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3107. Prior Authorizations or Restrictions

A. All health insurance issuers shall waive any prior authorization requirements or restrictions for screening and diagnostic testing for COVID-19 and respond to any requests for treatment of COVID-19 on a timely basis.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3109. Network Adequacy

A. All health insurance issuers are directed to verify that their provider networks are adequate to handle a potential increase and the need for healthcare services for COVID-19 cases diagnosed in Louisiana, including by offering access to out-of-network services where appropriate.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3111. Notice to Contracted Providers of Waiver

A. All health insurance issuers shall provide notice to contracted providers that they are waiving the cost-sharing and prior authorization requirements, or any restrictions, and ensure that information regarding the waivers is provided to customer service centers, nurse advice lines, and others so that proper information is provided to insured citizens.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3113. Prescription Drug Coverage

A. Health insurance issuers shall allow insured individuals to obtain refills of their prescriptions even if the prescription was recently filled, consistent with approval from patients' health care providers and/or pharmacists. This provision does not apply to prescription drugs with a high likelihood of abuse, such as opioids that are restricted to 7-day prescriptions.

B. The commissioner hereby suspends any and all precertification or step-therapy procedures in order to fill a prescription. This authorization shall be for a 30-day supply.

C. The commissioner hereby suspends any provisions in the Louisiana Insurance Code which place restrictions on replacement prescriptions pertaining to mail order prescriptions. Mail order prescriptions should be mailed to an alternate address if requested by the insured.

D. All health insurance issuers shall waive any and all restrictions relative to out-of-network access to pharmacy services or prescriptions.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3115. Timely Utilization Review

A. Timely decision making is essential to responding appropriately to COVID-19, and is particularly important to utilization review. Health insurance issuers are reminded to comply with the utilization review decision timelines set forth in R.S. 22:2401 et seq. and 22:2411 et seq.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3117. Intent and Purpose

A. The provisions of Emergency Rule 36 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum consumer protection for the insureds of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3121. Sanctions for Violations

A. The commissioner retains the authority to enforce violations of Emergency Rule 36. Accordingly, any health insurance issuers enumerated in Emergency Rule 36 or other entity doing business in Louisiana and/or regulated by the commissioner who violates any provision of Emergency Rule 36 shall be subject to regulatory action by the commissioner under any applicable provisions of the Louisiana Insurance Code

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3123. Authority

A. The commissioner reserves the right to amend, modify, alter or rescind all or any portions of Emergency Rule 36. Additionally, the commissioner reserves the right to extend Emergency Rule 36.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

§3125. Severability Clause

A. If any section or provision of Emergency Rule 36 is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule 36, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the commissioner, LR 46:

§3127. Effective Date

A. Emergency Rule 36 shall become effective at 12:01 a.m. on March 17, 2020 and shall continue in full force and effect until 12:01 a.m. on April 9, 2020, unless terminated sooner.

AUTHORITY NOTE: Promulgated in accordance with Proclamation No. JBE 2020-29.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 46:

James J. Donelon
Commissioner

2004#008



EXECUTIVE DEPARTMENT

PROCLAMATION NUMBER 25 JBE 2020

PUBLIC HEALTH EMERGENCY - COVID-19

- WHEREAS,** the Louisiana Health Emergency Powers Act, La. R.S. 29:760, et seq., confers upon the Governor of the State of Louisiana emergency powers to deal with public health emergencies, including an occurrence or imminent threat of an illness or health condition that is believed to be caused by the appearance of a novel or previously controlled or eradicated infectious agent or biological toxin, in order to ensure that preparations of this state will be adequate to deal with such emergencies or disasters and to preserve the health and lives of the people of the State of Louisiana;
- WHEREAS,** when the Governor after consultation with the public health authority determines that a public health emergency has occurred, or the threat thereof is imminent, La. R.S. 29:766(A) empowers him to declare a state of emergency by executive order or proclamation;
- WHEREAS,** the U.S. Centers for Disease Control and Prevention ("CDC") is responding to an outbreak of respiratory disease caused by a novel (new) coronavirus that was first detected in China and which has now been detected in many other countries, including in the United States. The virus has been named "SARS-CoV-2" and the disease it causes has been named "coronavirus disease 2019" (abbreviated "COVID-19");
- WHEREAS,** according to the CDC's website, person-to-person spread has been subsequently reported in countries outside China, including in the United States. Some international destinations now have apparent community spread with the virus that causes COVID-19, as do some parts of the United States. Community spread means some people have been infected and it is not known how or where they became exposed;
- WHEREAS,** on January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak a "public health emergency of international concern" (PHEIC). On January 31, 2020, Health and Human Services Secretary Alex M. Azar II declared a public health emergency (PHE) for the United States to aid the nation's healthcare community in responding to COVID-19;
- WHEREAS,** a World Health Organization statement released March 7, 2020 stated that the global number of confirmed cases of COVID-19 has surpassed 100,000;
- WHEREAS,** as of March 11, 2020, the CDC's website reports that 38 states, including the District of Columbia, have reported cases of COVID-19 to CDC, for a total of 938 confirmed cases, and that states have reported 29 deaths resulting from COVID-19;

- WHEREAS,** on March, 11, 2020, the World Health Organization designated the COVID-19 outbreak as a worldwide pandemic;
- WHEREAS,** on March, 9, 2020, a Louisiana resident, pursuant to CDC protocol, was tested for COVID-19, with the test being presumptively positive;
- WHEREAS,** in the last two days, several more Louisiana residents have tested presumptively positive for COVID-19;
- WHEREAS,** the State of Louisiana has reason to believe that COVID-19 may be spread amongst the population by various means of exposure, therefore posing a high probability of widespread exposure and a significant risk of substantial future harm to a large number of Louisiana citizens;
- WHEREAS,** the Governor of the State of Louisiana has consulted with the public health authority regarding COVID-19;
- WHEREAS,** the Governor, after such consultation, finds that a threat of a public health emergency is imminent;
- WHEREAS,** a declaration of public health emergency is necessary to allow state agencies to thoroughly prepare for any eventuality related to public health needs and deploy additional resources to assist local authorities, if necessary; and
- WHEREAS,** the Secretary of the Department of Health and the State Health Officer have requested that a public health emergency be declared.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the state of Louisiana, do hereby order and direct as follows:

- SECTION 1:** Pursuant to the Louisiana Health Emergency Powers Act, La. R.S. 29:760, et seq., a statewide public health emergency is declared to exist in the State of Louisiana as a result of the imminent threat posed to Louisiana citizens by COVID-19, which has created emergency conditions that threaten the lives and health of the citizens of the State.
- SECTION 2:** The Governor's Office of Homeland Security and Emergency Preparedness and Secretary of the Department of Health are hereby expressly empowered to take any and all actions authorized under the Louisiana Health Emergency Powers Act, La. R.S. 29:760 et seq. in relation to this public health emergency.
- SECTION 3:** The Secretary of the Department of Health and/or the State Health Officer are hereby expressly empowered to take any and all actions authorized thereto under Titles 29 and 40 of the Louisiana Revised Statutes and under the State Sanitary Code (LAC Title 51) in relation to this public health emergency.
- SECTION 4:** Pursuant to La. R.S. 29:724(D)(1), the Louisiana Procurement Code (La. R.S. 39:1551, et seq.) and Louisiana Public Bid Law (La. R.S. 38:2211, et seq.) and their corresponding rules and regulations are hereby suspended for the purpose of the procurement of any good or services necessary to respond to this emergency.
- SECTION 5:** Pursuant to La. R.S. 29:732(A), prices charged or value received for goods and services sold may not exceed the prices ordinarily charged for comparable goods and services in the same market area at or immediately before the time of the state of emergency, unless the price by the seller is attributable to fluctuations in applicable commodity markets, fluctuations in applicable regional or national market trends, or to reasonable expenses and charges and attendant business risk

incurred in procuring or selling the goods or services during the state of emergency.

SECTION 6: In addition to any authority conferred generally herein or by law, the Governor's Office of Homeland Security and Emergency Preparedness, through consultation with the Secretary of the Department of Health, shall have the primary jurisdiction, responsibility and authority for:

1. Planning and executing public health emergency assessment, mitigation, preparedness response, and recovery for the state;
2. Coordinating public health emergency response between state and local authorities;
3. Collaborating with relevant federal government authorities, elected officials of other states, private organizations or companies;
4. Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies;
5. Organizing public information activities regarding public health emergency response operations; and
6. Taking any other measures deemed necessary and proper, as authorized by law.

SECTION 7: The following travel restrictions will apply to all state employees:

- A. All state employees intending to travel beyond the continental United States shall review the CDC's website at <http://wwwnc.cdc.gov/travel/notices> to determine if the country to be visited has been identified as posing a threat of contracting COVID-19;
- B. All state employees traveling on state business to areas designated as Warning Level 2 or Level 3 or above by the CDC are hereby directed to cancel or postpone these trips; all employees traveling internationally to other countries are hereby required to obtain specific authorization from the Commissioner of Administration;
- C. All state employees intending to travel internationally for non-official reasons are hereby directed to notify their supervisor and Human Resources Director of the travel as soon as possible, but in no event later than forty-eight (48) hours prior to travel, and immediately upon return to the United States;
- D. All state employees with household members who intend to travel or have traveled to areas designated as Warning Level 2 or Level 3 or above by the CDC are hereby directed to notify their supervisor and Human Resources Director of the travel as soon as possible, but in no event later than forty-eight (48) hours prior to the household member's departure, to state the household member's expected date of return, and to notify their supervisor and Human Resources Director immediately upon the household member's actual return to the United States; and
- E. All state employees shall notify their supervisor and Human Resources Director if the employee or a household member develops symptoms associated with COVID-19.

SECTION 8: The Civil Service Commission and the Division of Administration are hereby directed to develop a set of guidelines for state employees who are infected with COVID-19 or under quarantine for possible exposure to COVID-19. Such guidelines shall include direction for the management of sick leave by state

employees and provide for direction, if possible, for the employee to work remotely. The guidelines developed by the Civil Service Commission and the Division of Administration shall be put into effect by this order.

- SECTION 9:** All orders allowing for visitation by the parent of a foster child that resides in a home that is quarantined or isolated due to COVID-19 are hereby suspended. The Department of Child and Family Services is hereby ordered to make all reasonable efforts to allow for alternative visitation.
- SECTION 10:** This Proclamation shall be disseminated promptly by means reasonably calculated to bring its contents to the attention of the general public. The Proclamation shall also be promptly filed with the Governor's Office of Homeland Security and Emergency Preparedness, with the Department of Health, Office of Public Health, and with the Secretary of State.
- SECTION 11:** All departments, commissions, boards, agencies and officers of the State, or any political subdivision thereof, are authorized and directed to cooperate in actions the State may take in response to the effects of this event.
- SECTION 12:** This order is effective upon signature and shall remain in effect from Wednesday, March 11, 2020 to Thursday, April 9, 2020, unless terminated sooner.



IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana in the City of Baton Rouge on this 11th day of March, 2020.

s/John Bel Edwards

GOVERNOR OF LOUISIANA



EXECUTIVE DEPARTMENT

PROCLAMATION NUMBER JBE 2020 – 29

***ADDITIONAL MEASURES FOR COVID-19
PUBLIC HEALTH EMERGENCY***

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29:721, *et seq.*, the Governor declared a Public Health emergency in Proclamation Number 25 JBE 2020;

WHEREAS, on March 13, 2020, in emergency proclamation 27 JBE 2020, the Governor supplemented the measures taken in his declaration of a Public Health Emergency with additional restrictions and suspensions of deadlines and regulations in order to protect the health and safety of the public from the threat of COVID-19;

WHEREAS, the COVID-19 pandemic has necessitated an increased need for supply chain movement of commerce that extends beyond the normal call for demand and business hours;

WHEREAS, the Federal Motor Carrier Safety regulations, 49 CFR 390, *et seq.*, limit the hours operators of commercial motor vehicles may drive;

WHEREAS, 49 CFR 390.23 provides an exemption from these regulations for up to 30 days if an emergency has been declared by the Governor;

WHEREAS, the Secretary of the Department of Transportation and Development is requesting that a state of emergency be declared pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29:721, *et seq.*; and

WHEREAS, further, several additional measures are necessary to ensure that goods and supplies can be delivered within the State of Louisiana; that health care providers can be available for treatment of those affected with COVID-19; that certain fees and fines for the Department of Health for those affected by the disaster are waived; that certain insurance regulations may be lifted by the Commissioner of Insurance; and that workers who lose employment because of this emergency are able to obtain unemployment benefits in a timely manner.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: There shall be an exemption from the federal rules and regulations that limit the hours operators of commercial vehicles may drive, specifically, Part 395 (drivers' hours of service) of Title 49 of the Code of Federal Regulations, and any additional appropriate response regarding additional expenditures due to this declaration as determined by the Secretary of the Department of Transportation and Development, or by the Louisiana State Police or local law enforcement agencies for public safety issues in order to ensure the uninterrupted supply of essential goods and commodities.

SECTION 2: Nothing herein shall be construed as an exemption from the Commercial Driver's License requirements in 49 CFR 383, the financial requirements in 49 CFR 387, or applicable federal size and weight limitations.

SECTION 3: The Commissioner of Insurance shall have limited authority from the Governor to suspend provisions of any regulatory statute of Title 22 of the Louisiana Revised Statutes of 1950 concerning any health insurance policy or contract relative to the current public health emergency, where such statutory or regulatory requirements prevent, hinder, or delay necessary action in coping with the current public health emergency, including the prohibition of any cost sharing, deductibles, copayments, and coinsurance related to the diagnosis or approved treatment of COVID-19.

SECTION 4: This authority granted to the Commissioner shall not relieve an insured who has a claim caused by this public health emergency, or its aftermath, from compliance with the insured's obligation to provide information and cooperate in the claim adjustment process relative to such claim, or to pay insurance premiums upon termination of the provisions of this Order.

SECTION 5: Louisiana state licensure laws, rules, and regulations for medical professionals and personnel are hereby suspended for those medical professionals and personnel from other states or other countries offering medical services in Louisiana to those needing medical services as a result of this disaster provided that said out-of-state or out-of-country medical professionals and personnel possess a current medical license in good standing in their respective state or country of licensure and that they practice in good faith and within the reasonable scope of his or her skills, training, or ability.

SECTION 6: All out-of-state or out-of-country medical professionals and personnel offering services in the state of Louisiana by authority of this Order shall submit to the State Health Officer, or his designee at the Office of Public Health within the Louisiana Department of Health, a copy of their respective professional license and photo identification, together with any other forms or documents the State Health Officer may require, by contacting the Office of Public Health.

SECTION 7: The following specific provisions of the Louisiana Revised Statutes of 1950 related to the imposition of fees or charges related to transactions with the Department of Health, or their authorized agent, as qualified by this Order, are hereby suspended for transactions by individuals when, as determined by any guidelines or directions issued by the Secretary, the request is a result of the emergency conditions:

- A. La. R.S. 40:40(2), to the extent that it requires payment of a fee for production of a duplicate birth record; and
- B. La. R.S. 40:40(3), to the extent that it requires payment of a fee for production of a duplicate death certificate.

SECTION 8: The following statutes relating to unemployment insurance are hereby suspended to the extent and in the manner provided for below:

- A. La. R.S. 23:1600(4) shall be suspended while this Order is in effect for emergency-related claims to the extent that claimants are required to wait a period of one week before receiving benefits.
- B. La. R.S. 23:1601(1) and (2), which provide certain disqualifications for otherwise eligible claimants. Such disqualifications include reasons for separation from employment, including a substantial change in employment by the employer or intentional misconduct connected with employment by the claimant. Separations that are the direct result of the impact caused by COVID-19 are not the fault of either the employer or the claimant. Administration of these separation issues with regard to such claims places an unnecessary burden on the state's unemployment system. Otherwise eligible claimants shall not be disqualified based on R.S. 23:1601(1) or (2).

SECTION 9: All departments, commissions, boards, agencies and officers of the State, or any political subdivision thereof, are authorized and directed to cooperate in actions the State may take in response to the effects of this event.

SECTION 10: These provisions extend retroactively from the initial declaration of emergency from Wednesday, March 11, 2020 to Thursday, April 9, 2020, unless terminated sooner.



IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana in the City of Baton Rouge, on this 14th day of March, 2020.


GOVERNOR OF LOUISIANA

ATTEST BY THE
SECRETARY OF STATE


SECRETARY OF STATE